

KYLE ATLEE CAMPBELL,)
)
Petitioner,)
)
v.) 1:12CV863
)
MIDDLE DISTRICT OF NORTH)
CAROLINA,)
)
Respondent.)

Petitioner, a prisoner of the State of North Carolina, and a Defendant in this Court in United States v. Campbell, Case No. 1:11CR325, has submitted the forms for filing a petition under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody. For the following reasons, the Petition cannot be further processed.

- In light of these pleading failures, the Court would ordinarily recommend that Petitioner's § 2254 Petition be dismissed without prejudice to Petitioner filing a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. However, in reviewing

Petitioner's criminal case in this Court, United States v. Campbell, Case No. 1:11CR325, the Court notes that Plaintiff has now submitted a Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255, challenging his conviction and sentence in that case. Thus, to the extent Petitioner is attempting to challenge his federal conviction or sentence, those claims are proceeding as part of the § 2255 Motion, and it does not appear that there are any other matters raised in the present § 2254 Petition. In light of the pleading failures noted above and given the subsequent filings in Petitioner's criminal case in this Court, the Court recommends that this § 2254 Petition be dismissed without prejudice. To the extent Petitioner seeks to challenge his federal conviction or sentence, Petitioner may continue to pursue his pending § 2255 Motion. To the extent Petitioner is seeking to challenge a state conviction, he may file a new Petition under 28 U.S.C. § 2254 specifically setting out the basis of his claims.

In forma pauperis status will be granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

IT IS RECOMMENDED that this action be filed, but then dismissed *sua sponte* without prejudice to Petitioner continuing to pursue his pending § 2255 Motion or filing a separate Petition under 28 U.S.C. § 2254 challenging a state conviction.

This, the 21st day of November, 2012.

/s/ Joi Elizabeth Peake
United States Magistrate Judge